

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ESTATE OF
ROGER D. OWENSBY JR., et al.
Plaintiff,

Case No. 1:01-cv-769

vs

Senior Judge S. Arthur Spiegel

CITY OF CINCINNATI, et al.
Defendants.

ORDER

Before the Court is Plaintiff's motion to compel responses to his second request for production of documents (Doc. 66). Defendants have responded to the motion (Doc. 75). No reply has been filed.

The instant motion to compel was filed on November 24, 2003. The motion alleges that Defendants failed to respond with any written responses to the second request for production of documents which was served upon Defendants on September 18, 2003. In the motion, Plaintiffs seek as relief (1) an order requiring Defendants to provide a written response to the request and to produce the requested documents, and (2) an award of reasonable expenses for bringing the motion to compel.

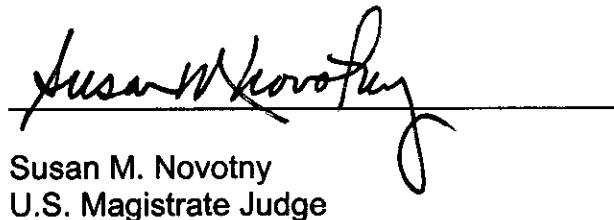
In response to the motion, Defendants do not contest their untimely response to the request for production, but represent that they fully responded on December 16, 2003. Defendants state Plaintiff's request for fees "lacks merit", apparently maintaining that their delay was substantially justified.

As noted above, Plaintiff has not filed a reply to Defendants' response. Thus this Court assumes Plaintiff is satisfied with Defendants' (albeit tardy) production. The need for a compulsion order appears moot. The issue of fees however requires resolution.

Accordingly, it is now ORDERED:

1. Plaintiff's motion to compel is denied, however the Court shall further consider Plaintiff's request for an award of fees pursuant to Rule 37(a)(4)(A), F.R.Civ.P.
2. If Plaintiff maintain his demand for an award of fees, he shall confer with Defendants in an effort to amicably conclude this matter. If the parties are unable to reach an agreement, Plaintiff shall notify the Court and submit an affidavit in justification of the reasonableness of the fees and expenses requested. Defendants may respond to the request within ten (10) days of Plaintiff's filing.

Done this 7th day of January, 2004.



Susan M. Novotny
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U.S. Magistrate Judge